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Comparison of the Engl. & Con. Law

Engl. Law. Husband & wife	Con. Law
1 The Husband acquires an absolute right to his wife's personal property	1 The same
2 His right to her choses in action, is an absolute right to dispose of them, as he pleases but if he does not exercise this right during coverture, in the event of the husband's dying first, they survive to the wife	2 The same
3rd In event of the wife dying first the husband is entitled to administration of them without liability to account for them, this is effected by a stat. of Con. and for it was not so at common Law, but they went to her administrator, to be distributed to her next of kin, or to her executor if she made a will of them, which by com. Law she was enabled to do, and still is unless the stat. reserved too impliedly took away that power, but if he neglects to take administration the common Law rule obtains	3 The common Law rule obtains with us
4 Judgments obtained by husband and feme and either of them die before collected they go to the survivor	4 The same principle prevails in the granting of retaining the avails of such judgments to joint tenancy, and it is to be may in this State be granted whether the rule is just since the jus accrescendi is unknown to us in this State.

2 English Law

5th The Chattels real of the wife in the event of the husband dying first, go to the wife The ground of it is that the husband and wife are joint tenants and the survivor to the wife by the jus accrescendi

6th In the event of the wife dying first Chattel real go to the husband by the jus accrescendi

7th The real estate of the wife remains hers notwithstanding the marriage but during the coverture he is entitled to the usufruct

8 In the event of her dying first it descends to her heir at law, under the incumbrance of the husband's curtesy if the requisites to give the husband such an estate had taken place, if not it descends to her heir without such incumbrance

9th In england the husband curtesy left as long as the husband lives

Can Law

5th The law is the same only the ground in our law is the same as in choses in action

6th As the jus accrescendi, is not acknowledged as our law. I see no reason why they should not, as chattels in action, go to the administrator, or of the wife executor if the wife may be

7th The same

8 The same

9th It is a question whether it lasts any longer than such time as the heirs of the body of the wife comes of age. if there is no such heir our law is the same as the English This doubt is decided by a decision of the Supreme Court

English Law

1st
The wife may with her husband convey him all property. Provided it is done by fine or recovery. and she must be privately examined & must freely & freely

11 By the Eng Law the wife cannot convey her real estate to commence in future without her husband for the maxim is that a free hold cannot commence in future But if she convey with out her husband by fine or common recovery, it binds her and her representatives, and is every way valid unless defeients.

The wife cannot devise her real estate being distributed by a Statute of 32 & 8

Connecticut Law

She may do the same by ordinary mode of conveyance in this country without any private examination

I see no reason why she may not without her husband convey her real property. The conveyance operate when the contingency is ended. for the maxim referred to has been nullified by adjudication of court and entirely done away by Statute

The wife may devise her real estate. If this we are ascertained by a judgment of the Superior court in that case there was the husbands consent. I see no reason why that should be necessary as no right of his can be affected by the devise: We have a Statute, granting authority may devise, with exceptions. of those who may not and that is not there is no prohibition to wife. and there is no one party refusing from contingency if there was she could not convey. The choses in action, their operate the same under Statute

4 Eng

Connecticut

At Com Law the husband can not by any possibility, lease the real estate of the wife for any longer term than his right to such priviledge continues. Built by a statute of Henry 8th he may together with his wife lease it, but it may not be for more than one life or twenty one years from the commencement of such lease

Our Law the same as the Com Law is stated to be

The wife on the death of the husband is, after the debts are paid entitled to one third of his personal estate, if there are children, and to one half if there are none But if the lease he may devise from her the whole except her paraphernalia. The distribution to the wife as stated is by statute

Our Law the same but a similar statute

The wife is entitled to dower in all the real estate of which the husband was seized during the coverture provided the estate had been such an one that the wife could be endowed of it. This estate the wife cannot be deprived of by a sale of the husband, nor by the claims of creditors

Our Law differs in one particular, that she can be endowed of what he died seized. This difference is effected by statute

Eng. Law

The husband cannot devise away the wife's paraphernalia, tho he may dispose of them during coverture, & they are liable to creditors when the husband's estate is exhausted but not until the time and even then if it has been exhausted by specialty creditors, she must have recourse to the real estate. She shall come upon the real estate to the extent of such special by debts, if so much is necessary to satisfy the

The husband with the wife is liable for all the debts of the wife contracted while sole, if collected during coverture, but not the wife

The husband liable civiliter with the wife for her torts while sole, if joined during coverture

Am. Law

Our law is ~~[illegible]~~ with the real estate with us is liable to all debts. I should therefore suppose that both real & personal estate should be exhausted before the paraphernalia would be liable for it is apparent that the principle of law is, that all the husband must yield to creditors. it is to be preferred to Legatees & the difference making real estate subject to pay debts generally, if effected by statute

Same Law

The same

6 Eng Law

Can Law

The husband is liable civilitr with her for all torts committed by his wife during coverture in his presence, and without his assent committed in his presence & company with him

Same Law

2 The Wife can have separate property of her own both real & personal, in the former of which the husband is not entitled to the usufruct, nor can he in any manner intermeddle with the personal. The latter he may devise but not the first because she is prohibited by a statute. She may acquire personable property by settlement of her husband before marriage, and by the intervention of Trustees after marriage, and sometimes a gift directly from the husband has been supported & frequently it may be acquired by the first devise if another takes the use

Same Law

only the wife may devise her separate real property

Eccl Law

21 Tis a custom in London that a feme sole trader is a feme sole, in derogation of the maxim of the Com Law

No such custom

22 A feme dower may be barred by a jointure settled on her before marriage, or after but in the latter case she may abandon her jointure & take her dower

Same Law

23 A jointure must at least be a freehold estate

Our statute leaves room to doubt whether a jointure may not be of personal property as well as real and if it can it may be a curious question what kind of property the wife has in such jointure during the coverture. It seem to be a revival of the Saxon morgengifu or dower ad ostium ecclesiæ, which was received from the Lombards & Longobards and Lyndewode, and endowment of personal property, and that such property was the private property of the wife, but of this she might not make a will it being as they express property of the husband

8 Eng Law

4th Eloping and living in adultery is a bar of dower.

Com Law

The same

2d He is liable to fulfill her contracts, where it is usual for her to make such which he permits. He is liable where the articles purchased came to his use, as the use of his family. except in cases of extravagant conduct on the part of the wife, as where he furnishes her with all necessaries & yet she runs in debt for necessaries, where he abandoned her he is liable for her contracts for necessaries for her support & family neither is it in his power to prevent his liability by forbidding persons to trust her in those cases. He is not liable where his wife leaves him without cause. He would not be liable [illegible] if he, leaving home is not known, he is liable when they [illegible] not [illegible]

Com Law

Eccl Law

26

If feme covert having with her husband, having separate property such property is liable for her contracts to the extent of it.

Same Law

2d. feme covert separated from her husband by articles of separation and having a separate maintenance is liable for her contracts to their full extent

Opinion of no reason why this is not Law being founded on principles of justice, reason and sound policy, and I see no reason why the circumstance of her having a separate maintenance should make any difference, and if it is material, why should she be liable to a greater extent than such property. I apprehend that the reason she is liable, is not that she has a separate maintenance, but that she lives separate

28th She may sue and be sued as a feme sole when her husband has abjured the realm, is banished, is transported as an alien enemy

Same Law

English Law — Connecticut Law

29th Where there are articles of seperation it is a compleate renunciation of all marital rights to the extent of the articles, and always implies that the husband is no longer entitled to her services, as her person and cannott restrain her of her liberty — Same Law

30 If the husband covenants on his part to give up all right that he has in her real property, such property she can effectually convey without him. — Same Law

31 The husband is not liable for the wrongs of his wife criminalities, unless for her support or kept committed by her or his company — Same

32 The wife is liable for her own wrongs criminality except the support of her in company with her husband — Same

33 For an injury done to the person or reputation of the wife she is entitled to the damages — Same

Eng Law	Connecticut
34 In such case if there is any special damages to him peculiar consortium amisit, as any loss of property, he alone is entitled to an action	Same law
35 If an injury to house & property, if it affects the inheritance as a damage to houses & trees, the person entitled to the damages, if it alone to the usufruct as an injury to the emblements, he is entitled to the Damages	Same Law
36 The wife must be joined with the husband in every suit where the debt duty or damage would accrue to the wife as the death of the husband	
37 The husband alone regularly brings the action where the debt or duty would accrue to the husbands death	

learned

survive to the wife, but it seems to be admitted that he may join the wife in case where the property has been the meritorious cause of the right of action

Jaine

38 If a feme covert brings an action alone which would survive to her — if her coverture is not pleaded in abatement, no advantage shall be taken of it in bar.

Same

39 If a feme sole sues and marries she abates her writ

40 If the feme sole is sued and marries, the writ ~~fails~~ abates

41 Feme sole owes debts and marries these debts are not collected during coverture, they survive against her.

42 The action must be brought against husband & wife where the right of action would survive against the wife, in the event of the husband dying first

43 The husband's estate is under the encumbrance of a mortgage and redeemed by the separate property of the wife

It is probable that the action must be brought in the two courts that abatement must be pleaded to coverture and not in bar, will be taught hereafter

the husband dies the wife shall
stand in the place of the M-gee Same
and the heir shall not have it with
out redeeming it

4th The husband may dispose of
the wifes paraphernalia during the
coverture by grant, gift deed &c, tho
not by will, yet if such disposal be
only a pledge she shall have it, and
if there is estate sufficient arising
from the funds and of which the Same
debts are to be paid, she shall
be entitled to so much of the sur-
plus, as may be necessary to re-
deem, before any distribution
is made

4th It is a general rule that all
contracts entered into before Same
marriage by husband and wife
are extinguished by the mar-
riage, yet marriage settle-
ments have been supported
in equity, without the intervention of trustees

14 English Law Can Law

16 It is a litigated question whether a bond given by the husband to the wife whilst sole, in contemplation of marriage which by the condition could never be due till the death of the husband as a bond conditioned to leave her by will a certain sum was extinguished or not. such bonds have been supported in a court of Law, but however they may be considered in Law they will be supported in equity

17 A will by a feme sole is an marriage revoked so in case of a subscription submission of a cause to arbitrament a marriage is a revocation of the submission

18 Husband and wife cannot be witnesses for or against each other, either in a civil or criminal case, although parties are agreed to receive their testimony. To this rule the case of treason is an exception so that the indictment of the husband for the attempt of the wife on the subject the authorities

Stra. 633 & ~~Dumbepunch~~
so that the object is to withdraw us to keep the man free is witness

Eng Law

49 a marriage is held to be absolutely void if the requisites required by the St 26 Geo 2 are not complied which St. see 8. it must be celebrated by a person in orders with the exception of Jews and Quakers

50 the person in order performs the ceremony by virtue of authority derived from the State not by virtue of his clerical character

Connecticut Law 15

The statute regulating marriages does not in terms declare a marriage void however may celebrate it. Yet it declares that no person shall celebrate a marriage, unless it be a clergyman or some magistrate and that within certain precincts. I believe the general received opinion is, that if any other person shall so perform the marriage ceremony it would be void.
The statute also requires publishment and consent of parents. I believe that no body can suppose that where these ceremonies were neglected that the marriage was void I am at a loss why it should be in the former case, it is true, there a penalty is affixed to the former and none to the latter transgression but whenever one is guilty of a breach of the statute, he is punishable for a misdemeanor, tho no penalty is affixed

50 the same for if this was not the case their power to marry would be incompatible with their power incest to the gospel

31. The Statute of Henry 8 enacts that every person may marry any who is not within the Levitical degrees, and unless Gods law prohibits. which is construed to extend to cases of former marriage, living the husband or wife as the case may be, pre-contract or imbecility. In all these cases the ecclesiastical court will grant divorces a vinculo matr. but in case of the first contract the former marriage is the marriage adjudged valid. for if no divorce is had during the coverture nothing shall impeach such marriage to bastardize the issue. But if a divorce is had during the coverture it goes upon the ground that the marriage was void ab initio and the issue are bastards. For a supervenient cause as adultery, polygamy &c. a divorce is had before the same court: but if it is a mensa et thoro only the issue is not illegitimate, and the court may allow the wife alimony. And parliament in some cases grant a divorce a vinculo matrimonii for adultery

By our Statute the causes of divorce are fraudulent contract 3 years wilful desertion, 7 years absence of and adultery, the supreme court grant divorces in these cases, a vinculo, and the issue are not bastards. In cases for corruption & perfidious sentence the assembly grant divorces either a vinculo matrimonii or a mensa & thoro, and may grant alimony. The supreme court where the divorce are impowered to grant the innocent wife a part of the husbands estate not exceeding one third part she is entitled to dower. It is observable that our Statute is silent as to pre-contract or imbecility unless included in the term fraudulent contract. as to former marriage living the husband or wife the second is void and needs no divorce. All marriages within the Levitical degrees absolutely void with the exception of the wifes sister

Eng Law

Dan

¶ 2nd Husband and wife are divorced a vinculo matrimonii and the wife has a child and it is in proof that it was by her former husband & yet it is a bastard — a wife divorced a mensa & thoro has a child, the presumption of Law is that it is a bastard but if it is in proof that it was by her husband the child is legitimate. If the husband and wife live seperate by articles of agreement, and the wife has a child the presumption of Law is that the child is legitimate and nothing but impossibility of access on the part of the husband can make the child a bastard

Probably the same Law

¶ 3 When upon a marriage a settlement is made upon the wife by the husband (not as a jointure in bar of dower) the husband is considered in equity as the purchaser of the wifes portion. so that if the husband should die, his executor shall have her share in action

I have not heard that any such case has been before our courts

Eng Law

5 H The wife by marriage does not gain a new settlement, and tho her former settlement is said to be suspended during the coverture, yet upon the determination of the coverture it revives again

Can Law

I believe there received opinion in this state is, that the wife by the marriage with the husband gains a settlement with him, or at least after having been a covenant of her husbands settlement one year

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Parent & Child

Eng Law

1 Every child not born in wedlock as a competent time after is a bastard

2 The child may be a bastard tho born in wedlock the principle by which to ascertain this fact, is that the child is a bastard, where access of the husband is impossible - but in the application of this principle, it was formerly held that there could be no other

evidence of impossibility, but only that the husband was not infra quatuor maria, but a more rational rule now obtains. Any evidence of absolute impossibility is admissible, as that the husband was in another part of the country &c. But impossibility weighs nothing for if the wife lived in adultery with another man, & if there existed no impossibility of access the child is not a bastard

3 When the impossibility of the husband is demonstrable the child is a bastard

4 But it seems if a man marries a woman with child by another man, the child is not a bastard

The same

Same

I know of no such case determined by our courts. I suppose the doctrine very questionable if impossibility of the husband knew the fact, it might make a difference

If a bastard dies intestate and without issue, the maxim is that he is filius nullius, so that there can not be any heir to him by any reason whatever.

A bastard shall not be entitled to, nor transmit any inheritance as heir to his father or mother or any other ancestor, nor can he have any heirs but those of his own body; for inheritances must be derived by the mutual conjunction of both the paternal and maternal blood, but a bastard has no blood on the father's side; and therefore, if he marries and has issue two bastards, and one dies without issue, the other shall succeed to the whole of his estate, to the exclusion of the mother and her relations.

A bastard may acquire a property by a name, acquired by reputation, but no advice, limitation or gift can make the adoptive child of such a person, who is reputed a bastard, the heir of the body, so as to entitle such child to inherit.

Quaere. How far the following decision of Lord Mansfield's may prevent the bastard from inheriting from his parents as legitimate children do. But whether the new policy has gone so far as to prevent a man of the latter description, having property, and a bastard child, any thing but the child inherit? Quaere. How far the case of Collingwood and Pace, cited by Lord Mansfield, can be supported against the doctrine of the following cases.

The same law, unless it should be thought reasonable, that where there is no child of the bastard in any degree living, that the mother should inherit.

The case of Mr. Wilkes, determined by the courts of the first case put, may be very reasonable, as the intention of the grantor in such case fairly be presumed to be that legitimate children only should inherit; but nothing can be more peculiarly absurd than such a decision in the last case, where that presumption is so much against the words of the grant.

8 th There vicecare bastard and cigne en mulier puisne the ancestor dies and the bastard entres, and dies seised, his issue cannot be defeated by any of their title by the mulier or his issue

I know of no case determined

9 The settlement of a bastard is the place of his birth

The settlement of a bastard is the settlement of his mother their is effected by adjudication of court

10 Infants are not bound by their contracts generally but for necessaries they are the articles must be those not barely necessary but must be necessary for the infant in his then circumstances, that is to say he will not be bound by a contract for necessaries if he is under the actual government of his parents Master or guardian, and that government is duly exercised

The same Law and the Statute upon this subject I suppose rendered in consequence of the Common Law

11 The articles must not barely be necessary but suitable to the infants rank and of a reasonable price (e.e) he shall not be bound to pay more than such price

The principle the same

Q. L. Barnet & Child

12 altho an infant is
bound by his contracts
for necessaries as before
explained. yet such se-
curities given by him
as precludes an enquiry
into their consideration
are valid and such are
the grounds I apprehend
it is that Chandler with
penalties are valid, ne-
gotiable notes when
negotiated and bills
of exchange are valid
when given by an infant
but when no such reason
exists then securities
given by an infant
for necessaries are good
as a note of hand not
negotiable and a
single bill

13 Where such security
is avoided the contract
revives

14 Whenever an infant
does an act which he
would be compelled
in chancery to do, it is
well done and he cannot
rescind it

The principle the
same, yet we have
inadvertently consider-
ed notes for necessa-
ries good. But since
with us the consider-
ation of notes cannot
be enquired into
any more than of
bonds in Eng. to have
preserved the Law en-
tire we ought to
have considered
such notes as void
as else in such case
have relaxed the rule
and suffered their con-
sideration to be en-
quired into

Same Law

Same Law

Parent & Child

Com Law

1st No decree will pass in Chancery against the infant without giving him a reasonable time to contend against it after he comes of age, this time in Eng Law is six months

Same

16 Contracts of any species by infants not for necessaries, whether they relate to the realty or personalty are void as voidable, the principle by which this object is governed is that the infant at pleasure may refund such contract, without any respect being paid to the contract whether a fair one or not, this privilege is given to the infant to be used as a shield to defend them against imposition, but is not intended, but is not intended that they shall use this privilege as an offensive weapon to do injustice.

Same

17 Contracts which respect the realty, generally are void but voidable, but should he after he comes of age confirm such contract, by a new promise or any act evidential of his consent to it such contract would be good. Yet if it should be necessary to confirm such contracts as void, in order to give the infant

that [illegible] election which his minority will confirm too, in such case his contract is void, as if he should incur a forfeiture by such contract, in such case the Law considers it as void, to protect the infant against the forfeiture

18 Notwithstanding that infants contracts are voidable, yet it seems that if he sell any lands and deliver over them with his own hand, in such case he cannot avoid the purchaser as a trespasser, but must sue for his property, and then will be entitled to his action. But if he sell and do not make an actual delivery and surrender of the possession it [illegible] surrender is voidable in which case if [illegible]

18 [illegible] Yes this deficient action, it appears to me to be a statute of principle either the Act is a trespasser in both cases or neither. I cannot conceive of any reason why a manual tradition should make a difference and I apprehend it would not be necessary to consider him as a trespasser in either case. There is no necessity of considering the matter as a wrong to give the infant the full benefit of his privilege and it is time enough for the infant to say when he has made it known that he rescinds his contracts, otherwise it might be imposed by him for the purposes of speculation, without any advantage to himself, and yet I should suppose that if the infant had learnt that he had sold his property to a Bankrupt upon credit, he might consider such contract void and avoid the [illegible] surrender &c. [illegible]

Parent & Child - Infants

Lecture 25

19 An infants conveyance of his real property by fine and recovery, is not void but voidable by the infant during his minority, but not after. If we are at a loss why the infants privilege should be thus curtailed, we are furnished with two reasons, which Eng Lawyer seem to suppose are good reasons. It is a rule say they that in every judicial act infancy is to be tried by inspection of the infant, they suppose that an Eng court have sagacity enough to know whether a person is an infant or not by looking at him, but if he one has arrived at full age they will be at a loss to know whether he was an infant or not at a former period. I should suppose it was a safer way to enquire of the register, the infants parents, neighbours &c than to trust to the skill of the court in Physiognomy, another reason is given, that the record carries with it an irrefutable evidence that the examen of the fine, was not disabled by any thing to convey, this is to me wholly incomprehensible or if true it would, never the less, be a reason for altering the method which at present

We have no such conveyance as the fine and recovery, and of course none of the inconveniences attending them

9.6 Infant. Eng. Law

Lean

2. Other conveyances of real property are void except by permanent which are voidable only, this is analogous to the actual tradition of lands & chattels

Where the infant is a party, in the nature of a conveyance, he cannot disaffirm it, it was the opinion that in other cases it was the same law

21. The infant executes a deed of gift, may any body what he does or says unless he acts indiscreetly, as in releasing a debt without receiving it, and so subject to be a disaffirmant in such case he shall have his privilege & avoid his contract

So me Law

22. An infant sells an horse and receives the money, as buys an horse and pays the money, & then rescinds the contract, shall he retain the money, and recover the value of the horse in the one case, and retain the horse and recover back the money, in the other case? by the common law he may. This appears to be destitute of principle, for if the contract is rescinded, it is as if it had never been. It is unjust that the infant should take the property of another person without any consideration and have his privilege for the years of his infancy. It is unnecessary for

for the purpose of preserving him from imposition: for this is effected by his refunding the contract, and when that is done he ought to retake the property thus received by him

It is said that the Law presumes that it was a gift to the infant. Such a presumption is in direct opposition to the nature of the transaction; for when a man pays his money for an horse, and takes him away; there is no reason for presuming that he intended to give the purchase money to the vendor

I know of no case where this point has been decided

23 A contract for money loaned to an infant to be laid out in necessaries, and is actually so laid out, may at Law be availed, but will be supported in equity, that there should be such different rules in different courts, I apprehend is impolitic. For if it is reasonable that it should be enforced any where I can find no solid reason why a court of Law should not do justice unless we are to suppose that Law is a something opposed to justice & reason

Infants Eng Law

Law

If it be a rule unreasonable then a court of equity is not warranted to support it. This disgraceful distinction has its origin in the notion made of thinking that no one Law Inconsistent in the courts of Law. Affrett with the weight of precedents, farmed in barbarous times, which courts of Equity freed from the shackles imposed by precedent, render judgment under the influence of Common Sense

2d Altho infants may be joined their coadjutors with a adult have not the same privilege

Same Law

2d The infant make partition if it is an equal and just partition, this he cannot refuse for this never can be liable in chancery to do, if the unequal he may refuse

Same Law

26th An infant heir Mortgagee by descent upon the legal pay ment of the money due to the Mortgagee cannot, he cannot refuse for this he can be liable in Chancery to do

Same Law

27 altho the rule of Law is that the infant or his representative may avoid a contract made by the infant, yet if an infant of age to dispose of his personal property, Stat. 43 Eliz. should devise his personal property to pay this contract, as the infant had full power to dispose the debt is compelable in equity to pay it. I see no reason why the rule should not be the same in Law as equity. This whole matter being placed upon these cases

I know of no case as to the age of disposing of personal property by testator

28 An infant of the age of consent to marry 14 in M. may covenant to settle any particular estate upon his wife & issue and equity will enforce such contracts

I know of no case on this subject

29 An infant after he is of the age of 14 is liable for his torts civiliter and criminaliter

Same Law

30 An infant is not liable in any case for torts civiliter or criminaliter under 7 years of age from that time until 14 he may or may not be liable as he appears doli capax. & the presumption is in favour until 10½ and against him after that age

Same Law

Principles of the Law of Crimes

31 An infant is not liable for any species of wrong or any slander until 17 years of age

32 An infant is liable criminaliter for his fraud but not civiliter

33 Infants of 14 are liable for their wrongs, yet if that or any is neither relevant to an indictment nor punished corporally, the infant shall not be so punished, neither shall he be punished for a crime that is a mere nonfeasance as where a fine is laid if such persons do not build a bridge an infant is one whose duty it was to build, he neglects yet he shall not be punished

34 Parents are bound by the contracts of their minor children where they expressly or impliedly allow

Same Law

The defendant was prosecuted unfounded of the liable criminaliter, it is because it was a wrong for the same reason any act to be liable civiliter, not upon the contract but for the fraud which induced the contract.

Same Law

Same Law

supplied allowance is the only difficulty. it is settled that where the article purchased come to the use of the Parent, pend the contract is in the parents business, & such a kind as is usual for the minor to make, and the Parent be discharging such like articles, supposed he should give him his time, to shift for himself would it not subject him? under one case the Parent is liable the against his consent, i.e. where necessaries are furnished to an infant child which he refuses to furnish and you will remark that the recovery is by an action of debt

3d An infant gives a warrant of attorney to confess judgment against himself, the court on motion will vacate the judgment

3d He have no such beneficial purpose as that of the courts vacating a judgment I should suppose if it were would be severe on the infant the law that we shall consider such judgment as void and who ever acts under it as a pa

36 Parents are not liable generally for the Debts of their children, if debts are done in their allowance in the immediate execution of their business, & the debts are they

32 Engage Parent & child
to their will yet they are liable

37 Parents an Grandparents
children and grandchildren, at
any age are compelable by Law
to support each other in case of Pov-
erty, and where there is more than
one person liable, the proportion
tion of maintenance will be
in proportion to their respective
abilities, this is effected by statute

38 Sons in Law are not obliged
to support their wifes parents
this is determined by an adjudication
& court not to be within the statute

39 A marries a pauper & she can
not support her children. A is not
obliged to do it

40 B. has estate and is able to sup-
port her children, then is liable
but his liability determines with the
cestui

41 A judgment against an adult
and minor, the minor not
being sued by his guardian
may be revised into tote

We have
such a statute

We have
a like ad-
judication

39 I know
of no decision
on this point
I apprehend
the usage
is different

Same
Law

41 If in any
case it reflects the
minor. This
difference is
effected by ad-
judication of
court.

442 As the parent is entitled to the services of a minor child, and a injury to the child by which he loses the service entitles him to an action per quod servitium amisit

Same

443 The last mentioned action is allowed by a parent against a person who debauches his daughter, and altho the loss of service seems to be the ground upon which the parent brings the action, yet the usual damages by no means comport with this idea. It is apparent that under cover of loss of service reparation is meant to be made to the wounded feelings of the parent, and for the disgrace occasioned by such a transaction. The loss of service seems to be regarded as the smallest injury in the Pltffs case

Same

444 The parent is entitled to an action on the case for enticing his child out of his service. Quere would he not be entitled to an action against the man who had corrupted his morals and led him to the commission of crime

445 As the parent is bound to maintain his children, an injury to his child which has occasion him expence

37 Parent & Child Eng Law
entitles him to an action on the case, and if this happen, then there is loss of service, it may be recovered in the action per quod servitium amisit. being stated as a ground for special damages
46 The parent may correct the child with moderation. The only difficulty is to ascertain when he has exceeded the just bound. If in the opinion of the triers the child was corrected more than he ought to have been, or more than they would have done for the same thing. Yet I do not apprehend that this lays a sufficient ground to subject the parent. I conceive the parent acts in a judicial capacity, and for the mistakes of the understanding, of which blame is not predicable he is not liable but where his acts flow from an impure or in legal language he acts maliciously, under the influence of unusual malice, in such case he may be same

liable. And it may be true that the mode of punishment will furnish strong evidence of this malice, it is not enough that the motives of the parent were of the most unjustifiable kind, if the correction did not exceed the bounds of moderation in the opinion of the triers, he is not liable.

47 Parent may justify in defence of the child, and the child in defence of the parent

48 Parent may educate their children as they please with certain restrictions upon education them in the Popish religion

49. Guardians in chivalry are entirely extinguished

50 Guardian in socage is where the ancestor dies leaving an heir under age of 14. entitled to the fee of real property, in such case the person who is ~~not~~ nearest of blood, to whom the inheritance cannot by any possibility

48 We have no such liberal construction, parents are not answerable or compelable to learn their children to read the bible and to teach them the laws against capital offences. In event of their inability to do this, to learn them by heart some other catechism

36 2 Part 1 & 2 Add

descend, guardian in sac
age. This guardianship extends
to such real property, and
the custody of his person
but has nothing to do with
his personal property. It
lasts until the ward is 14 years
of age, when such ward may
elect his guardian

There is no such guardian in our law

51 Such guardian is com
putable in chancery to give
bonds, or to account in com
mon, and may be displaced
by the chancellor

No law

52 A guardian may be ap
pointed by will, and such
guardian is guardian of
real and personal estate,
of the person of the ward &
such ward cannot elect this
guardian after the age of 14. he
is liable to the same control
in chancery as guardian and
ward during minor age

There can be no such guardian, as we have no such stat. law, that prescribes, and the Engl. law under which we act

53 Where there is an infant
and the father is living he
is guardian liable to be

displaced as to the guardian with the estate by the Chancellor, but not as to his Ward

5th The father is dead and the mother is living, the ecclesiastical court or court of chancery appoint a guardian to the males which lasts until the ward is 14 years old, then he elects his guardian, subject indeed to the ratification of the court. And if no such election is made then such guardianship continues until he is of full age and this guardian is guardian of the person & his estate both real & personal and liable to the same care & [illegible] as other guardians, upon his appointment he gives bonds for the due performance of the trust. The mother is guardian to females until 12 or 14 years of age, but if they do not elect the mother remains guardian

same as only the court of probate appoint instead of the ecclesiastical court in E.G. and no such description obtains as that the mother is guardian of the females

38

35 [illegible] Child [illegible] an
father and mother are both dead the
law the same as to males & females
as stated in the foregoing case as
to males

same

36 The guardian is to
render account with the
ward. He may be called
to account during the guard-
ianship in a suit by the
ward by his next friend
if the necessity of the
case requires it. Guardi-
ans are ordinarily call-
led to account in chan-
cery, tho an action of ac-
count lies at common law
and in practice during. Note
the general rule is
that when the guardian
has used the minors mo-
ney for his purpose, he
must pay it with inter-
est. The reason is the
ground work upon the
declaration of the ward he
can be compelled to
account for the profits
of the estate, if he neglects
to put the minors money
to interest, he will be

The general principle
are the same with the
difference in practice
that the ordinary mode
of calling a guardian
to account, is by an ac-
tion of account. I
know of no reason
why it may not be done
in chancery, if the re-
quisit of the discovery of
any property is wanted
that cannot be had
in an action of account
should suppose that ac-
counting in a court
of probate would be
conducive to all
the parties

Lean

Lee Title Lee Action Lean Ejectment

to such neglect. if he purchases lands in the infant's name with the infants money the rule is that if the infant requires it he shall account with the infant for the money thus expended with interest. and the infant in such case will be trustee of the land for the guardian, and can[celable] in chancery to convey to him

57 A court of chancery may issue an injunction against guardians committing waste.

58 When an infant sues it must be by guardian or prochein amy. and in the event of the case going against the infant, such guardian or prochein amy is liable for the costs. when an infant is sued it must be by guardian and a judgment rendered against him without guardian is erroneous and may be reversed

59 the settlement of the parent is the settlement of the child, untill the child by his own act acquires a settlement

60 In case the father has no settlement, the settlement of the mother is the settlement of the child

61 If neither father nor mother have any settlement, the place of the last settlement of the child is their settlement.

62 If the father is dead and the child by the act of his mother acquires a settlement in his mothers

40 Parent & child Ex. Law | Ex. Law

20 new new settlement by
a new required settlement
tlement

63 The child haund
of apprentice gains a
settlemen in the place
where he last served
his master 40 days.
an apprentice, is irre
moveable from his
master

The current of authorities
is that an apprentice can
not gain a settlement
by exam nanancy, and
the courts have based
it upon the fraud
of their being irremova
ble, just that it seems
upon a reasonin the
English Law

64 By a variety of Eng
statutes the officers of a
parish, which by Law is
haund to maintain
the poor, may prose-
cute the reputed father
of a bastard child and
compel him to in
demnify the parish
against being liable to
maintain such bast
ard

Our Law nd Statute has
in view to secure the pub
lic, as in the Eng Law, but
also to effectuate an equal
maintenance of the child
by father and mother, and
gives the mother a right
of proceeding against the
reputed father, upon a
certain Statute by which
she will procure by judg
ment of court a sum
of money collectable
in quarterly execution
equivalent to half the
expence of bringing up
the child, and half the
lying in charges. These
executions will cease
if the child dies, before
it is liable

Master & Servant Eng Law

1st Slavery is unknown to the common Law since villenage ceased

2nd Apprentices must be bound by indenture in writing, and this is by the common Law.

3 Such indenture is not assignable by the common Law, altho it may be done by the custom of London

4 Whatever property is acquired by the Apprentice by his labour, is the masters, altho he has run away from his master

5 An hired servant leaves his master, the property acquired by his labour is the servants, and the masters remedy is by action

Connecticut Law

In this country villenage was never known. We have no common Law that slavery exists in this state. other than that arises from holding some black men in servitude in defiance of the Law of nature and the principles of the common Law. Neither have we any statutes recognizing such doctrine, altho we have statutes that assume the existence of such a practice this is undeniable

Same Law

Same Law

Same

112 Master & Servant Eng	Connecticut Law
6 The hiring a menial servant without specifying any time, is an hiring for a year	I believe no such rule has obtained. but such hiring is Null & of no effect
7 The apprentice lives with a master as such, the master is entitled to what he can earn by his service whilst with him, and can never be called upon to pay any thing for such service. may correct him as in other cases, and such servant is entitled to the benefit of using his trade.	The same Law only we have no Statute as that of Eliz respecting a seven years apprenticeship to use a trade
8 An infant binds himself an apprentice as he is allowed to do by the 5th Eliz. & he is not liable on the contract in the indenture, but entitles the master to the rights of a master, and the apprentice to the duty of an apprentice	We have no Law by which infants can bind themselves apprentices
9 A justice of the peace may pursuant to a certain Statute bind apprentices as servants, and the overseers of the poor may pursuant to another Statute bind poor children, males until 21 females till 21	We have a Statute that enables selectmen to bind out apprentices poor children, males until 21 females until 18
10 Apprentices cannot by justices. these justices may discharge from their apprenticeships for the misconduct of the master	We have a Statute that enables a justice for the ill treatment of the master to a servant of any description to bind over the matter to the court. which court may discharge such servant from his masters service

Master & Servant. Eng Law

11 By 5 & 6 a partie may bind [illegible] a minor pauper, apprentice to a master against the masters will, and if such masters will not accept such servant he is liable to a penalty — No such Law for raising a revenue

12 A master is liable upon the contract of his servant, as a parent for the [illegible] his child, where he has an express or implied authority to contract — Same

13 A master may correct moderately his servant as a parent may a child — Same

14 A master is liable for the torts of his servant, as a parent for those of a child — Same

15 A servant may justify a battery in defence of his master, and whether a master may in defence of his servant there are a diversity of opinions. — I think the master may as well as the servant

16 A servant is beaten so that the master looses his service, he is entitled to his action per quod servitium amisit — Same

17 A servant is enticed away out of his masters service, or employer, if it is known that he has run away from his master, the master is entitled to an action on the case, against such enticer or employer — Same

18 A master may declare upon a contract made with his servant, when acting for him, as upon a contract made with himself

46 Master & Servant Eng Law

19 The master is liable in like manner for the fraud of the servant practised by him in the master's service

Same Law

20 Where a master is rendered liable to an action as suffers in his property, through want of care as fidelity in the servant is liable to the master

20 Same
21 Same

21 A servant comes to the possession of the property of the master by delivery of the master and takes it away animo furandi, yet at common law this was not felony: by the Stat of Henry 8 th this is made felony. Yet if the servant procured the property of the master, with a view to steal it, it is felony at com Law

22 A servant if apprentice gains a settlement under the Stat. 8 Chas 2 d in the place where he resided the last 40 days if not an apprentice by being hired a year

22 By the decision of our courts when our Stat. of settlement an apprentice gains no settlement han this can subsist with the general Law which gives a settlement to any person common a year. I am at a Loss

Bailment Eng Law

The general Laws of Bailment

1st Where a person is taken by virtue of an Execution committed to gaol, the chief keeper of the gaol who is commonly the Sheriff of the County, and such other persons as are in the gaol, such keeper is liable to answer to the creditor for such escape, and nothing shall excuse the keeper from such liability, unless the escape is effected by the Enemies of the land or by a mob or rebel army. However numerous an escape, inevitable accident and the act of God

2nd Where the escape is negligent only, which is in all cases where it is not voluntary, with the exceptions mentioned in the foregoing article, whether the negligence was actual or constructive only in such case the keeper of the gaol has a right to pursue the keeper and if on fresh pursuit he retakes him, and

Connecticut Law

We have a rule that has an exception where the insufficiency of the gaol is owing to the liability of the Sheriff in the discharge of his duty it is to build the gaol. This rule But in all cases as in the Eng. Law the Sheriff & County are liable with one difference as directed by the 22nd Sect. which is that if the escapee, or those who aided him are able to pay the County is not liable — and it is to be remarked that the Sheriff is not excused even where the escape was occasioned by the insufficiency of the gaol if there was any actual negligence

No mention will be made of the common Law in Connecticut Law unless it varies from the Eng

Bailment Eng Law

and confines him in gaol before action brought by the creditor such escape shall excuse him from his liability, but not after he is sued by the creditor. But in that case he may retake and confine the debtor for his own security.

3rd he may if he chuses sue the debtor, when he has become liable by the escape of the debtor.

4 If the escape was effected by the assistance of others, the keeper may sue all who assisted.

5 When the escape was negligent only the gaoler is liable to be sued, but in that case there must be actual negligence to subject the gaoler.

6 Altho the sheriff or keeper is liable civiliter, yet the gaoler alone is liable criminaliter.

7 When the escape is from the liberty of the yard, the escape is negligent only

Bailment English Law

8 An action on the case and debt lie, in the former case the court have determined that a nominal damages may be given, while in an action of debt the whole debt is the rule of damages

9 Both of those actions are unknown to the common Law and are founded in the equity of a certain statute

10 If the sheriff dies the action does die with him

11 When the escape is voluntary the sheriff is inevitably liable to the creditor for he cannot retake, and if he should it would be false imprisonment. He cannot have the escape when he has paid the money, but is wholly remediless. Even if the escape should promise to pay him, or give him a bond for the purpose of indemnification, such promises & bond are void

12 The creditor is not obliged to return to the sheriff, and in such case if he resort to the debtor, who is by the direction of the creditor, taken on such execution, the Gaoler may retain him

13 A voluntary return of the Escape to gaol in case of a negligent escape will operate as favourably to the gaoler as recaption

Parliament Ent Law

12 A voluntary return of the escape in a voluntary escape, will justify the gaoler in retaining him. but will not justify his liability to the creditor

13 If a creditor suffers a debtor voluntarily to escape he can never retake him

14 Where there is a present debt and no action. the suffering one to escape discharges both

Ghost the last case is really law I have same doubts. It seem to me unreasonable

If this is law it is unreasonable, for suffering him to go is no crime, and not to be punished with the loss of his debt. neither is there of it a payment, nor by any act that judicially regenerates in humanity, it cannot receive such construction, cannot receive

It can't happen that this should be a disch. is to me incomprehensible. It may be some evidence of payment of the debt, perhaps, I am not sure, but presumption never, that the creditor wants to suffer rather to go [illegible] unless there be, it is liable to be rebutted by shewing that he received nothing. If the law had made it the duty of the creditor to imprison. It might be said to be wrong. but it is not

17 The gaoler has a right to retain the prisoner until his fees are paid

18 The gaoler is under no obligation to furnish the prisoner with provisions

19 A practice has obtained in some prisons of enlarging the prison bounds

Such practice is not universal in this state. It depends upon usage the extent of the yard is prescribed by the county court, and it is at the discretion of the Sheriff to indulge the prisoner with the liberty of the yard; and when indulged he may determine him at pleasure

20 A prisoner in Execution may escape without the walls. I apprehend there is no difference in the Law as it respects such prisoner and one upon execution, only that an action against the Sheriff must be an action on the case and not debt because before judgment there is no ascertainment of the demand

An usage has obtained in the state of suffering such prisoner to go at large and no liability is incurred provided the gaoler has him in gaol when the court sits to which the writ is returnable. Whether this has originated from a decision of a court or not I do not know, but believe it to be reasonable

Bailment Engs an Lo an nectent La

21 The judgment obtained against the gaoler in such action, will be, in case the escape is a man of property, only damages for the delay and disappointment. If he is a Bankrupt it will be the whole debt

The principles re agnized by our courts when the county is sued are the reverse of these. They determined to give in all damages if the debtor was a Bankrupt and if he was not. the State had an action could be maintained against the county

22 Rescue to an escape is a crime in the sheriff & if it is in a civil action, it will subject him to a forfeiture of his office and also to a fine at the discression of the court

In such case it is by our Law considered as a misdemeanor punishable as a crime at common Law

23 If there is a rescue to an escape in a criminal case, in such case the gaoler is to be punished as the prisoner would have been if he had been convicted

52

Innkeepers & Law

1st Innkeepers may exercise their profession without any license for that purpose from the authority. if too many in the public good are set up those not necessary may be indicted for exercising a nuisance. those persons who exclusively or principally for the purpose of retailing Liquors in small quantities, are under the regulation of certain Statutes and must have a license from the Justices of peace before they can exercise their profession.

2nd Innkeepers are obliged to entertain travellers, and if they refuse so to do without sufficient cause they are liable to an action, if sufficient is tendered them.

3rd To refuse in such case is a crime indictable as a misdemeanor.

Victuallers, Innkeepers, Taverners, & retailers of Liquors in small quantities, are under the regulation of certain Statutes. They are nominated by the authority — selectmen constables, grand jurymen, tything men & wardens of the town. the county court license all unless they judge the person nominated unfit, for any misdemeanors. The taverns useless

Innkeepers Eng Law

1 The Taverner is obliged to pay for the goods of his guest, lost in his house unless they perish by the act of God inevitable accident. or the Queen enemies of the Land

5 If the goods are put out of the village, by the direction of the owner, and they are lost the taverner is not liable, as where the guest sends his horse to pasture, and he is stolen. If indeed he is lost in such case by the negligence of the taverner, as by having down bars &c then he is liable but that is not on the ground that a common Bailee would be liable for negligence

6. If the goods are stolen by the servant or companion of the guest. the host is not liable

7. If the guest deceives the taverner by informing him that his trunk or portmanteau contain nothing valuable, when they do and they are lost the taverner is not liable

8 If a man leaves a tailor at a tavern

and put away to that end in a
room but to the owner, and they
are stolen, he is not liable unless the person went off and intended
to return again and became one
his guest

9 A person to be entitled to the
rights of a guest must be a traveller not an inhabitant of the
town occasionally at a tavern
not a boarder &c

10 A man who is a stranger,
and has arrived at the end of
his journey and stays at a
tavern to day or two is a
traveller at a tavern since

11 The innkeeper has a lien upon
the person & property of his guest and
may detain either to satisfy his de-
mands, or if the guest should go off
without paying, he may pursue
him & take him upon the
writ without a warrant

12 If the innkeeper assents to the
guest should go without paying
he cannot afterwards have
any remedy but upon the can-
tract

An innkeeper can retain his guests property for his reasonable charges not exceeding the value of the property detained, but he cannot detain a guest in two days after the liquors is delivered

Innkeeper Eng Law

12 If the taverner retains the property he cannot sell it when the expense equals the value of the property. But by the custom of London he may have it appraised to him

No decision in this State

13 The common carrier is liable for property last at all events except the act of God inevitable accident or the queenemies of the land

14 He has a lien on the goods delivered to him, and is not obliged to part with them untill he is paid

15 He is not liable in an action of trover unless he converts the goods to his own use, but in an action on the case founded on the custom

16 He is not liable if fraud has been practiced upon him with respect to the article which he carries

17 That species of common carriers. Postmasters are not liable for robberies of the mail

18 Such common carriers as ferrymen & the like are not liable

Jan. Theft &c. Then the owner takes the property ie he has own custody. or sends a servant with it. Tho takes the cust lady

19 The Bailee to keep with and a guard. is not liable unless he conducts fraudulently

21 ... undertakes ... is liable for any ... [illegible] ... the application can ... [illegible]

Jenny Blackstone 158

January Lecture

21 ... [illegible] ... liable ... [illegible] ... Bailee ... [illegible] ... liable ... [illegible] ... happened through ... [illegible] ... the Bailee ... [illegible] ... excuse ... [illegible] ... then ... [illegible] ... accident

... [illegible] ... Bailee

1. But that negligence must be such as to be evidence of fraud I apprehend when there is any evidence of fraud it precludes the idea of negligence. and there an intention to do wrong. and if there is nothing but negligence it's being so can never alter the case

20. ... [illegible] ... Bailee ... [illegible] ... and the Bailee ... [illegible] ... the thing bailed.

Bailment Engagees

22 So the bailee to whom things are delivered to carry for a reward, if not a common carrier, is not liable unless for negligence

23rd If damage insue by reason of the bailment being exceeded the remedy is not trespass. But if the article was obtained with a view to exceed: the excess I apprehend would be trespass

24 At common Law if the bailee embezzled the thing bailed it was only a breach of trust but by the 21st of Hen 8th was made felony. yet by the late determination if the bailment was obtained for the purpose of embezzling animo furandi it is felony

As we have no such statute the common law rule is our rule

25 The pawnee may use the thing pawned if there is expense in keeping it, to the amount of such expense. and if the article is lost in using the Pawnee is not liable unless lost by his negligence

26 The pawnee if he uses an article most incur expense in keeping yet the

~~Contracts Infant~~ Vide &c

answerable for the same
or if a purchaser buys of Bailee he will
be secured in his title (viz) when the
nature of the Bailment is such that
[illegible] it is calculated
to deceive the Bailor as purchasers. Not because it is [illegible]
[illegible] may be deceived. but where it
is the natural probable consequence
of such bailment

Contracts. Infants. Vide &c

1st The contract of an infant is void as explained under the head of Parent and Child

2nd The contract of a feme covert is void or binding as explained under the head of Baron & feme

3. The contract of a &c of an idiot or Lunatic may at Law be avoided upon the death of the Lunatic by his representatives but in his life time

4. Tho the Lunatics contracts cannot be avoided at Law in the ordinary mode of proceeding, yet as the King of England is the Lunatics guardian & all the Lunatics subjects, a commission accommodation

I apprehend that with us it is void in his lifetime as well as after his death

may issue out of chancery to enquire wether such person is an idiot or not. and upon ~~issue~~ found by those commissioners a scire facias may issue in the kings name against the grantee of the idiot. and upon this suit the idiots grant may be avoided in his lifetime

If no upon an application in chancery by the attorney general the contracts grants &c of such persons will be rescinded in the lifetime of the Lunatic and the the Lunatic is made a party it will not enquire the proceedings

6 A contract entered into during the avoidable, if the party will confirm it when the disquisition ceased is good unless the party dies and stand his rights. and supposed that he was obliged to fulfil it. the disquisition notwithstanding

Whereas person is intoxicated with liquor and driven into this by the person who contracts with him &c will release against

as we have nothing the ~~deaths~~ facts in this country are destitute of the property &c of so proper a qualification

This distinction of the attendant is common law but we can therefore have no such ~~men~~ proofs Our courts will confirm the contracts of such persons as would be by themselves

Why is it necessary that the contract to be relied against should be made with him and not with them

A contract if it
unreasonable or un
[illegible]

into the in addition
for the purpose of ma
king such contract
If any one makes
an unequal bargain
with such person he
has taken an undue
advantage of his
situation

§ A contract that is manifestly unequal made with a man of weak [illegible] will be relieved against in Chancery

It is said that it is upon the footing of fraud but they admit. But the[y] admit that the [illegible] of entitlement & the inequality [illegible] sufficient [illegible] of this fraud which makes the [illegible] as stated

9 A contract entered into which was occasioned by either party to fact or the Law, a party by reason of this mistake did [illegible] and his rights will be relieved against in chancery

10. A contract made by [illegible] of imprisonment or duress for mind or to our life limbs or liberty is void at Law

duress of goods or duress per minas or to me they will have the same effect is doubtful [illegible] are conclu[illegible]

Is [illegible] reasonable or this fraud not?

12 A security obtained by duress for a just debt is void. But the original contract remains

13 A contract obtained by fear unjustly occasioned will here be relieved against in Chancery whether the act which occasioned the fear amounted to duress or not

14 If a contract is entered into & occasioned by fear which is not unjustly occasioned, as reverence for parents, will be valid

15 Fraud as it relates to the Essence of a contract, is void at Law so that when a deed has been executed procured through fraud in the Essence, the Obligor may plead non est factum

16 When the fraud relates only to the consideration of the contract, such contract is valid at common Law, and the party defrauded left to his remedy at Law for the damages

17 Such contracts will here be relieved against in Chancery on the terms of restoring all parties to their rights

18 By the Law merchant, an

If the bond be void for a parent, should a deed of this nature be obtained to obtain an unreasonable bargain it would be relieved against

When the fraud relates to the Consideration of it is total & the contract is void if partially the party defrauded is left to his remedy at Law this is effected by an adjudication in Chancery

of a contract
wholly vacate such contract.
Q. Where a vessel is sold by B. to A. by the name of
A. but his own knowledge is not the
description under which she was
known. If she did not know as
he can the employed

Q. If A sells to B. a vessel found sufficient
and warrants it to be sound, whether
he knew or did not know is immaterial he is bound by the warranty the
same in damages. If he knew
then is the warranty grounded with
the fraud. With out he is guilty
Then will be a ground for special
damages

Q. If the warranty must be at the time
of the sale and not a previous
When no thing can warrant
given at or subsequent to the sale

paid at the time of sale warranty against defects apparent at the time of sale unsound?

Q. Any misrepresentation of the qualities of the vessel at the

Q. God. If is immaterial whether the
deception was caused by
a concealment of facts whether
fraudulent or not it can not be
included

Contracts Comp Law

65

1st If one to B. an article that is not sound having a secret defect which is not communicated

A neither warranty, false affirmation can cancel that he knows. Caveat emptor

2d If the defect is visible defect & the purchaser not blind no relief by an affirmation upon, action for damages or an action

3d A contract may be avoided by mistake when the contracting parties are not deceived as where A agrees to give his son B. 200 acres of land on the condition if a marriage is had between A and B's [illegible] with A he may have part of the sum. The same rule prevails where two or more agree with one creditor to pay them more than an equal dividend

4th Where one man entices away by means of [illegible] to procure an unreasonable contract such contract will be relieved

I suppose an article to be by fraud when imposed upon A. By the terms of the sale it would not be an action to be maintained by B. against C.

against one [illegible]
Curmish of Law no ground
for a recovery of more than the
Gratuity upon a steady re-
[illegible]. as the Early case

2 & A contract obtained by fraud
or by [illegible] as a
[illegible] advantage
necessitous man, will here
[illegible] as against. a
[illegible] of distress, ignorance
of his rights the unreasonableness
of the bargain & the inadequacy
of the price & a decree upon
which relief is had

In these cases it
can make
is the ground
& not the
circumstances
relied
upon for
the
[illegible]
& [illegible]
[illegible]
[illegible]
[illegible]
no matter
what they [illegible]
if they lay a
foundation
for relief

2 If [illegible] can act do a thing in
[illegible] all in the nature of
[illegible]. as to work [illegible] in
a minute are waid.

a will tho the thing cant act done
[illegible] to be done, is compleat

[illegible]. as if a
promised to pay [illegible] L when he
[illegible] worth 1 Sixpence. yet is
[illegible] and pay for it is not [illegible] meant
[illegible] as [illegible] to the rule of
[illegible]

31 If contract to do a thing impossible at the time of contracting, which becomes impossible by the act of God the Law or the Dee. The promise is dis

32 If a man covenants to convey that which he has not. a thing become impossible for him to do. yet he is bound by his contract and liable at law tho Chancery will not decree a specific performance

33 If a man undertakes to do a thing which by his own act becomes impossible as if a mortgagee can never pay. yet he cannot upon the mortgagor offering to redeem, and Chancery will decree a specific performance

68 Eng Law Contracts

34 If a man covenant to do an impossible thing the obligation is void

35 If a man covenant to do an illegal thing the obligation is void

36 If a man covenant to do an impossible thing the obligation is void

37 If a man covenant to do an unlawful thing the obligation is void

38 If a man covenant to do an unlawful act the obligation is void

39 All contracts against the Law of nature, Law of Justice & State are void

If a person bind himself by a bond with such a condition upon it, that no more than the owing is contracted to, but in a different form, but is in substance the same as if detailed at length. If this is just the detention is not paid in principle

If a man covenant to do an impossible thing the obligation is void. If a man covenant to do an illegal thing the obligation is void. If a man covenant to do an impossible thing the obligation is void. If a man covenant to do an unlawful thing the obligation is void. If a man covenant to do an unlawful act the obligation is void. All contracts against the Law of nature, Law of Justice & State are void.

If a man covenant to do an impossible thing the obligation is void. If a man covenant to do an illegal thing the obligation is void. If a man covenant to do an impossible thing the obligation is void. If a man covenant to do an unlawful thing the obligation is void. If a man covenant to do an unlawful act the obligation is void. All contracts against the Law of nature, Law of Justice & State are void.

40 Some contracts tho' are against Law & Insurance are void at Law whilst others are to be avoided only in Chancery among the former are contracts to deprive one's self of liberty - not to till his land not to follow his trade - Wagers that have a tendency to introduce indecent evidence in a court as to wound the feelings of third persons to cover a bribe - to sell an office - among the latter are marriage brokage bonds - contracts for the expectancies of young heirs

Perhaps all wagers might with Propriety be considered as void being against Law & Insurance

41 Where A promises B money to be paid an an illegal contract tho B performs on his part he can never it from A

42 Where A pays B for doing an unlawful act. and B does it. or fulfils an unlawful engagement. which he was not obliged to fulfil. he never shall recover the money back. but in this case both must be in pare delicto

70 Eng Law Contracts

1 It seems to prevent a recovery of money paid upon an unlawful contract, both parties must be in equal fault, for when it happens by imposed hardship, as in case of money paid upon an usurious contract it may be recovered back

2 If the money has been paid to promote an unlawful thing, if the payer brings an action to recover before the act is done he shall recover, but if the act is done he shall not

3 If two persons are jointly engaged to pay money upon an unlawful contract, which by Law could never be recovered, if one of them pays the whole without the consent & privity of the other, he shall never recover the share of his partner but if his partner consents as is privy to the payment & does not object he is bound to pay his share

Perhaps policy would, to prevent the parties to contracts to be performed, from being disappointed, direct that there shall be no recovery in such case

Contracts Eng Law

#16 A promise to do a thing perfect by idle does not bind

#17 A promise a covenant to do a thing, which when the covenant &c was made was lawful but becomes afterwards unlawful is discharged

#18 A contract not to do a thing which by a law made after the covenant become the duty of the covenantor to do. such covenant is discharged

#19 In the above case if a consideration has been paid by the covenantee, he may recover it back

20 If a man grants that which he does not own either actually or potentially, such grant is void

21 If, in the last case the grantor had received a consideration for such grant. it must be recovered back

22 At common Law a contract binding an apprentice, must have been in writing, and various other contract must now be in writing by St Statute of frauds

53. When an Exr. or administrator contracts to pay the debts of the testator. it must be in writing, it must be in writing to bind them in their private capacity

54 When one man promises to pay the debt or default of another, it must be in writing and signed by the party to be charged therewith, yet when there is a promise to pay for the debt &c of another person, if the remedy against the other were extinguished, or never existed it is valid tho not in writing

55. If the remedy against the other is not extinguished, yet if by means of the contract the effectual recovery is rendered more precarious, the promise is valid without being in writing

56 tho there is a new consideration for the promise is by no means sufficient to take the promise out of the statute

57 Contracts made at auction are not within the statute

58 Any contract respecting lands &c. any interest in them is void unless in writing except leases for 3 years

We have no such exception as leases for 3 yrs

59 The person who enters under a verbal grant. or lease of land at a certain price or rent agreed on. and improves is not a trespasser but tenant at will

60 In such case the tenant can hold nothing by the grant. neither can the grantor recover the price agreed on by vertue of the contract

61 In such case. the person will be entitled to recover a quantum meruit for the use of the land

62 If a contract within the statute is made use of for the purposes of fraud (which) independent of fraud there may be in not fulfilling it. a court of Chancery will compel a specific execution of such contract, upon this ground it is, that contracts hastily executed will be decreed to be performed

63 When a Bill in Chancery if the Defendant admits the contract by his answer he never shall be allowed to assist upon the benefit of the Statute

64 A declaration upon a contract which the Statute requires to be in writing, there is no necessity to state that it was in writing it is enough that it comes out in evidence to be so

65 Where the Obligee draws up a contract containing contracts for Himself as well as the Obligor ~~it is~~ and the Obligor signs it. What he accepts, the Obligors signing shall be a signing for ~~both~~ the Obligee by his direction

66 It is not material in what part of the instrument the signing is done, to give efficacy to the instrument

67 A promise to marry is not the subject of the statute for when the statute speaks of promises in consideration of marriage it means marriage portion settlements

68 A promise not to be performed in a year must be in writing

69 If the performance depends upon a contingency, which according to the ordinary course of events may fall within a year, the promise is not within the statute, altho the contingency does not happen within the year

70 It is essential at common Law that there be a consideration for every contract, which must be either good or valuable tho the Quantum of such consideration is of no moment

71 If a contract is reduced to writing and the consideration detailed at length, so that the consideration whole amount might have been

appear, and in the view of the Law is no consideration, such contract is not more operative than if it had not been reduced to writing.

Connect No distinction between a written and sealed instrument obtains in this country. neither do I apprehend a court will give efficacy to a contract because it is written or sealed, merely to recover nominal damages.

7 Q Had such written contract been sealed, when the covenant appeared to be purely voluntary, and without consideration, a recovery may be had by the covenantee, but the damages will be merely nominal, neither will chancery decree a specific execution of such contract.

7 3 A contract may be reduced to writing and a valuable consideration acknowledged by the promissor, in such case the contract will become operative whether there was any consideration or not, because the party acknowledging the consideration can never be admitted to shew by parol proof that there was none, and not because the contract was written, as if the consideration so acknowledged, had been stated and appeared to be none such contract is not void

74 Tho a mere voluntary promise is not binding yett a voluntary Contract executed, as a grant, may be, and vests in the grantee

75 But in such case if any thing was intended by the grant other than to vest the estate in the grantee, then is the grantee a trustee to the grantor, which Trust if it be an honest one Chancery will execute - but altho it is a trust between grantor and grantee, yett if made with dishonest views. as to defraud creditors Chancery will not execute it, but leave the parties where the contract left them.

76 All such fraudulent contracts are at Law good against the grantor, between him and the grantee, but are void as to creditors

English Law

Can. Law

77 A part consideration is not sufficient to ground a ~~action~~ an promise on

78 If a requests B to do an act. and B. does that act. altho it is of no benifit to A. yet if he promises a reward to B for doing it. the consideration is sufficient.

79 If B. does an act beneficial to A. without request and A promises to pay for it. altho the consideration is part, yet it is ~~at~~ hard. but it would be otherwise, if the act done was beneficial to another

80 It is a doctrine now known to be the Law in diverse instances that a promise to one for the benefit of another. that the person benefitted may sustain the

I apprehend that in the case, whereon, if the promisor performed his promise, to the promisee, the promisee would be a trustee to the person intended to be benefitted

78 Compassion Contracts

action. but the precise limits of this doctrine do not appear to be clearly marked

81 A contract of a lesser kind is merged in the greater, so that no action lies on the lesser whenever the consideration of the lesser kind does not appear on the face of the contract. But if the whole contract is detailed at length and the consideration appears, both written or sealed yet an action may be sustained upon the assumpsit and the writing given in evidence

82 After a lesser contract is merged in a greater, an assumpsit to pay is nugatory for there is a remedy on the greater contract

83 Altho no action lies on a subsequent promise to pay a debt due by specialty, yet if the promise is made upon other consideration than the debt an action lies

84 A contract or security of equal rank does not merge the first but the promisee Obligee &c has a double remedy

85 In such case the Obligee altho he may sue upon either or both securities or on as many securities as he has, yet he can have but one satisfaction, but he is entitled to his costs on every action

86 In contracts nothing is a satisfaction but a receipt of the debt due, yet in torts where more than one is liable, a judgment against one is a satisfaction as to all

87 altho one bond &c does not merge another yet if a security is bettered by giving a shorter time of payment or adding another Obligor in such case the first bond is done away

88 A contract may be good, and yet the security for such contract be void or voidable if void ~~or voidable~~ it does not depend upon the contract at all if voidable it is a temporary suspension of the contract and when avoided the contract revives

89 A offers to B an article for a certain price. B agrees to give it. if nothing more is done there is no change of property nor does any action lie for either, for non performance

80 Comparisons Contracts

90 But if A tenders the article to B who refuses to pay the price agreed on the property is changed, or if B tenders the price and C refuses to deliver it is the same

91 So too if a future day of payment is agreed on the property vests unless the vendor is to retain the property until that time in which case it is optional with B. to pay at that time or at the time of the passage and B pays at the time. The sale is unaided

Usury

92 At common Law the demand for the loan of money was allowable to take it was a crime and punished as such

93 In England it has been made Lawful by various statutes regulating the rate of interest rendering void all contracts and securities for contracts in which more than legal interest was included and subjecting the person who takes such interest to penalties

Can. We have a similar statute with us the penalty is the amount of the sum loaned in Eng. double

94 The legal interest was first 10 percent then 8. then 6. but by the statute of Anne 5 is now the interest in Eng.

Can. with us in N. England it is now 6 Per Cent

9 If he receives too much in the contract it selly. as where if a loans 90 L and takes a note for an L 100 he is guilty of receiving too much in the contract. and this fact being proved the contract will be avaided. but in this case he is not liable to the penalties imposed by the Statute

96 If he receives too much by any indirect means as if he should loan 90 L in sellin a house for a man when it was manifestly worth not more than L 90 and take a note for L 100 he would also be guilty of receiving too much and his security would be void

97 The man who loans L 100 and takes a note for L 100 an interest and afterwards compels the Debtor to pay more than legal interest, is guilty of receiving too much, as is by this act made liable to the penalties of the Statute. but the contract is not avaided. being originally pure no subsequent corrupt agreement can affect the original contract

98 A contract may be avaided and the lender made liable to the penalties of the Statute whenever he receives too much in his obligation and then also receives too much. as where he

lends 90£ and takes a note for £100.
here he reserves too much and the note may be avoided. At the end of the year he has received £6 interest when he ought to have received only the interest of the 90£ lent. and has so incurred the penalties of the statute

99 If a man loans 100£ and takes a premium for the loaning it and a note as other security for the £100 this note is void. for it is the same thing as if he had loaned so much less than £100 as the premium amounts to. And if the premium surmounts the lawful interest for a year of the sum loaned the loaner has also received too much and therefore incurred the penalties of the statute

100 The offense of receiving too much is complete from the time of receiving too much whether the R is at the time of the loan or afterward and from that time the statute of Limitations (as in action for usury) which is one year begins to run against an action for the penalty

101. This action may be brought by any person as well as the person of whom the interest is taken

102 Interest may be received any time in the year and it is not usury

103 A. loans to B. 100 £ for lawful interest for 6 month and then B. pays L2. 10. 0 the half of the interest for a year. altho in this way A. receives more than 5 percent. per an. (for he has the interest of the L2. 10. 0 for the rest of the year,) yet it is not usury

104 When money is paid upon an usurious contract the payer may recover back the surplus of principal loaned and legal interest, for altho both contracting parties are participes criminis, yet the borrower is not in pari delicto with the lender

Can. If a case can be found in which the lender may with a good conscience retain the money so paid I do not understand why the borrower should recover it back

105 A. loans to B. on an usurious contract and takes a note &c for the money. which he sells to C. and B. receives the note to C the usury is purged

106 A loans to B on a pure contract and then on a usurious one and includes both in one security which security B may avoid when he does it. It is a question whether the first contract revives in its pure state

Con. If we reason from analogy it would seem that B the first contract was restored to its primitive integrity

107. It matters not whether there is one or more securities to a usurious contract. They are all part and parcel of the same transaction & of consequence are all void

108. A contract entered into in a country at legal interest, where the interest is greater or less than in that country where the suit is instituted to recover on such contract. the rule is that the interest of the country where the contract is made shall be recovered

109 A contract for legal interest is made in one country and the security for that contract is made in another & where the security is given the rate of interest is less than where the contract is made yet if the security is void including the interest of the country where the contract is made. it is not usurious

110 A contract securing greater interest than the interest of the country where the contract is made. if it has reference to another country and is there to be performed and the interest is not greater than the interest of such country it is a question whether it is usurious

Can. I apprehend that the current of authorities is, that it is not yet a fixed authority to the contrary is to be found in Dumford

111. A contract executed by contrivance in one country where the interest is greater than of that country where it would have been performed executed were it not for such contrivance, is usurious

112. Where more than legal interest has been reserved in a contract. if it happened by mistake either of Law or fact it is not usurious.

113. If there is a hazard of the principal loaned the contract is not usurious if there is more than Legal interest reserved in it

114. Such hazard must be real not merely colourable. and when the hazard is real no enormity in the interest will render the contract usurious. but it may be relieved against as unconscionable

115 So this principle is to be reserved the case of bottomry bonds, the purchase of annuities and in this state the letting of cattle to double in four years &c. which are not usurious

116 Where a man sells not loans, for a great sum upon credit than he asks, for cash in hand altho such sum greatly exceeds lawful interest yet the contract is not usurious. but if such sale is in fact to cover a loan. it is usurious

117 A contract to pay £100 in a year and if he does not he is to forfeit a penalty of £200 yet such contract is not usurious unless there was a secret agreement that such forfeiture should be incurred. in that case it would be usurious

118 Equity assume a jurisdiction over matters of usury, not upon the principle of vacating the contract. pursuant to the rules of Law of punishing the loan as a crime. but upon the ground that an usurious contract is unconscionable, making the rate of interest allowed by Law, the standard. beyond which no man in good conscious can go. therefore when equity relieves it is upon the application of the borrower. and the contract by the decree of chancery is not further affected than that the usurious interest is defalcated. and the borrower must pay the principal and legal interest

Com. Pry and Statute wherein an usurious

contract is sued in a court of Law. the Deft may if he elects so to do file a plea in nature of a bill in Chancery against the contract as usurious, paying relief. and the court of Law before which the suit is. is enabled to proceed to try the question, as a court of equity. and by the same rules as a court of Chancery, and by no other. and upon this graund it is that by the late decisions contrary to a long, but unfounded practice. the Deft who files his bill is not admitted as a witness unless called upon as a witness by the Plff in the case. If the case is determined in favour of the defendant. all the interest legal as well as usurious is defeated. In case the Plff does not sue. the remedy of the borrower, must be as under the English Law.

119 A contract which by the terms of it requires that compound interest shall be paid, is not usurious. yet no greater sum shall be recovered upon such contract, than if no such clause had been inserted.

120 A contract upon which simple interest alone is recoverable is not enfeoned in Law. after a length of time. say several years has elapsed. and interest is recovered and the parties agree to secure it contract with the compound interest. and such security is given. such contract is not usurious. and the sum so secured with the simple interest. accruing after the security given, will be recovered

121 The leading principle in computing interest, where there have been payments is to apply the payments to the interest and if there is then a surplus, apply it to the principal, and cast interest on the remainder. if the payment does not absorb the interest, but leaves a greater sum due than the original contract, you must not cast interest upon the sum so found due, but upon the sum of the original contract for in no instance can you cast the interest upon the interest

122 Altho a contract not to convey and trade generally is void, yet a restraint of carrying it on at a particular place is lawful, but in such case there must be a consideration in fact, and it is not sufficient that the contract purports to be made upon a valuable consideration, the court will enquire whether in fact there was one

123 A conveyance upon a good consideration only, will be void generally against prior creditors, not subsequent creditors

124 Such conveyance will not be void in any case if the grantor left a sufficiency to pay his debts, in such manner as precludes the idea that it was thus the act of the grantor

that the debt was lost. i.e. such conveyance shall not in such case be evidence of fraud. for its being voluntary is not enough to render it void against creditors. and they shall not defeat the just expectations of the grantee. because they have been negligent

125 The doctrine of fraudulent conveyances is regulated by the statute of 13 Eliz. but that statute is in affirmance of the common Law

126 Where there is a conveyance to avoid creditors it is not necessary that the grantee pay nothing for it. if he gives a consideration. but not an amounting to the value. that is if it so far falls short of the just value, that we fairly suppose a trust on the part of the grantee for the grantor. then is it fraudulent. and the grantee can have no relief for his partial consideration

127 A conveyance may be fraudulent altho the vendee gave a full price, for if he did it with a view to assist the vendor to defraud his creditors. it is fraudulent ——— Co. Lit

90 Comparisons. Contracts Fraudulent

128. A conveyance to one for nothing where there are no creditors. and there is a trust between the parties is lawful. and such trust shall be enforced in equity

129 Its being voluntary is no evidence of any such trust. for it might be and probably was for the provision of some person. but if the circumstances in the case rebut all such presumption. then does the Law imply a trust whether the parties have declared one or not

130 A. purchases land or other article for B. with B's money. and takes a conveyance to himself. then is A. a trustee for B.

131 It is a rule that where contract derives its efficacy from consent, yet nothing can be more apparent, than in a multitude of implied contracts, there is no consent other than that the law supposes a man to give, when in justice he is liable. Express consent is often opposed to the nature of the transaction

132 Such implied consent sufficient to lay the foundation for an action is supposed in every case where one man has got the money of another in his hands, which in equity and conscience he cannot retain. And upon same principle of

Why Destructs a recovery of the money out of his hands

133 So too where a man makes a grant, conveyance &c to the enjoyment of which by the grantee, some other thing is necessary which is not expressed in the grant. the grantor assent that the grantee shall have this thing is implied

134 So too if A should sell to B. the fishery of C in his possession in his presence claiming it as his. and C. is silent. C's implied consent to the sale is supposed

135 In contract not to sue for a certain time is no bar to a suit within the time unless the covenantee has any remedy, it is upon the contract.

136 But a covenant not to sue at all is a release and may be pleaded as such

137 It is a rule that where you declare upon or plead any writing, you must declare and plead according to the operation of Law what ever the writing as in the case above

138 Where the consideration of the promise &c is the promise of the other party, in an action upon such promise there need not be any averment of performance by the Plaintiff in his declaration for the remedies are mutual, as the contract is.

139 Where time is to be something done before the Deft is obliged to do in such case the Plff must aver that he has done or tendered to do

140 Where by the contract something is to be done by each contracting party at a future period and it does not appear which thing is to be done first, either party to entitle himself to an action must do or tender to do what by him is to be done, and of course must aver it in his declaration

141 If a man is by contract obliged to do a thing and afterwards a Law for bids his doing the thing entirely as agreed, yet leaves him at liberty to do part in kind with the whole agreed upon. If the other elects that he do that part he must, and altho no remedy can be had at Law upon such agreement, yet will Chancery decree a performance of what he can lawfully do.

142 Contracts respecting the realty may be specifically decreed in Chancery

143 So too, where the party claiming wants nothing but money, which may be recovered at Law yet if that right arose from a real contract which Chancery will execute, tho the other contracting party to too will Chancery execute it on the other hand

144 A voluntary contract will not be executed in Chancery

145 The power of a court of Chancery to execute a contract is asserted many, therefore if there

is any unfairness in the contract, hardship imposition, considerable inequality any want of mutuality &c Chancery will never execute it

146 A court of Chancery will relieve against a penalty and originally were the only court where relief could be had, but by the Statute of Anne a court of Law is invested with authority to render judgment for no more than the just debt interest and cost &c

Can we have a Statute of the like kind

Executors

1st The real estate descends to the heirs, over which the exr has no control, unless empowered by the will, and is assets in his hands to pay specialty and judgment creditors, who may if they elect come upon him to the extent of assets received from the ancestor, & judgment is rendered against him of the lands &c in his hands If he has aliened, the judgment is against him to the value, and the devisee is in the same plight as the heirs. In case there are no such debts the heirs or devisee, as the case is received, the real property without being liable to pay any debts, altho the personal estate falls short of ~~the~~ paying the debts

Can the real estate descends to the heirs, but is at the control of the Exr, in which case in Law it is

is necessary for the payment of debts, after the personal estate is exhausted for that purpose & is not assets in the hands of the heir as much as for the payment of debts

2. If the specialty creditors should elect to come against the Exr. as they may, and by that means exhaust the personal estate, and leave none to pay any of the simple contract creditors, then such creditors may in chancery come against the Heir to the extent of specialty debts he may have been collateral of him, & such monies being equitable assets are to be divided among such creditors pari passu - Where the personal estate has been exhausted by special creditors, a legatee as well as a creditor may come against the heir, but not against the Devisee -

Connect - The real estate is at the controul of the Exr. but before it is used the personal estate is to be exhausted in that case the Exr. is to apply to the Court Parole for an order to sell the real estate which order for the sake of the Court to give and the assets of such estate when sold are equally liable to the payment of all debts simple contract & specialty alike -

3. That specific personal estate called paraphernalia is also not devisable by will is notwithstanding the personal estate of the deceased is liable to pay creditors that

is as much of it as is over & above decent & necessary apparel, yet it is not to be meddled with unless the rest of the personal is there - in such case if it is taken & there were specialty creditors who exhausted the personal fund, the widow shall in Chancery stand in their place, as against the Heir -

Connect. As the real as well as the personal estate is the proper fund for the payment of debts, I apprehend both are to be exhausted before paraphernalia are to be meddled with - In addition to this when the estate is insolvent certain articles of personal estate are to be given to the widow, such as by law are not liable to be taken on an execution - and when the estate is solvent & every title remains after payment of debts, a practice has obtained, of giving a certain part to the widow at the discretion of the Judge of Probate -

4th Voluntary creditors are to be postponed to all other creditors & to legatees - Connect. of know of nothing in our law that appeared to this idea -

5 any person of sane memory having property who is of sufficient age may devise & make a will of his personal property - this ages 12 in women and 14 in females - females are

N.Y. an exception to this rule. in Heir in some cases, for where they have separate property their is devise is good; so is the devise of a Chose in action for until it is reduced to possession by her husband it is her property. so too a devise of that which she has as Executrix in autre droit.

The blind and untettered are not an exception but the will must be read to them. neither are those born deaf and dumb. provided it is in proof from their acts & understood their signs that it was their design to make a will, and that they understood the nature of a will

Connec. the same Law except in this State the age at which one may devise is seventeen

6th almost any person may be an Exr unless he is infame as excommunicated; minority is no Exception. but such Exr cannot act till 17 years of age. and in the mean time admr is to be granted durante minoritate

Connect. Law same only excommunication is no objection.

7 The infant Exr. acts at 17 and his acts are binding upon himself and others, yet if he should release a debt without receiving or any thing that would work a devastavit. at the most an act would bind an adult Exr yet shall an infant have his

privilege and rescind his contract

8 An Exr cannot be compelled to give bond for the faithful performance of their Trust by the spiritual courts, yet where an Exr is in failing circumstances (hereby will compel him to give bonds

Con. By a Stat. of this State an Exr must give bonds —

9th Administration must be granted to the Widow or next of kin that is to both or either, & if many are in the next degree of kindred it may be given to one, part, or all at the discretion of the Judge.

10th In computing who is next of kin the Civil Law is to be observed —

11th If the next of kin is under the age of 21. Administration must be committed to some other person, and in this case no respect is to be had to the next of kin —

12th No person can be appointed Admr except he or she is of the age of 21 —

13th Administrators are obliged to give Bonds for the faithful performance of their trust —

14th Where there is an Exr & he dies without a will, his administrator is not Admr of the Exr Testators goods not administred — but Admr de bonis non is committed & some other person & in this case no regard is had to next of kin & the same is the case where the Admr dies without compleating his business —

15th If it is the duty of the Exr either to refuse or accept the trust - if he neglects to do either he may be summoned & if he do not appear before the Spiritual Court where the business is done he is to be excommunicated -

Con. If he neglects his duty in this respect he is liable to a fine of £5 per month -

16th If the person named as Exr does any act as Exr before proof of the Will, he is bound to act, that is he is liable to all the burdens of an Exr - whether he proves the Will or not but can never maintain a suit without proving the Will

17th Where there are two or more Exrs & one refuses, yet may he in the life time of his fellow Exr act as such & all suits are to be brot in the name of all, but suits are to be brot only against the Exr who proves the Will unless the other acts as such — Con. Suits are brot by & against the acting Exr only -

18th If the Exr who accepts dies & appoints an Exr the last is the Exr of the first Testator, altho' the other Exr who refused is living -

19th The Exr who died did not appoint an Exr & the business is unfinished Admr de bonis non is to be granted - for the refusing Exr cannot act after the death of his fellow -

20th The Exr is the owner of the Residue after the debts & legacies are paid unless there is a Legacy given him by the Testator - in such case unless the Legacy is of some Freehold as legacy for a suit of mourning, arising of the Lease

the Exr. is not entitled to the residuum. but is trustee for the next of kin & must distribute such residuum according to the Stat. of Distributions —

Con. The exr. is not entitled to the residuum in any case

2dly. The Court will not let in parole testimony to shew that it was the intention of the Testator that the Exr. should have the Residuum altho' he left him a Legacy

Con. In our Law there is no room for such a Rule

2dly. The Court will not let in parole proof to shew that the Testator intended that the Exr. should not have the residuum where he left no Legacy —

3dly. In case a Debtor is exr. the Debt is assets both for creditors & Legatees but where there are paid the Debt is discharged —

Con. If this depends upon the Reason apprehended it does that the Exr. is entitled to the residuum after debts & Legacies are paid. the Doctrine is very disputable in Engd. where there is a Legacy given to the Exr. & unfounded in this Country where no such rule obtains —

2dly. This the duty of Exors & Admrs. to pay debts in the first place & in doing this they pay debts in the following order 1st debts to the Crown. debts provided by Statute. 3 Judgment debts 4 Specialty debts. 5 simple contract debts and if he should pay any debts of an inferior

rank not having paid the expenses debts and assets fail. he must lose part of his own estate

Can with us there is no rank of debts except funeral debts and debts contracted during sickness are to be paid first, and the usual understanding of this is that sickness means last sickness only and agreeable to this idea is the practice in the courts of probate. but as there is no such term as last mentioned in the statute and no definition given that I can't it must be considered as sub judice lis est

2 If the payment of debts of equal rank the Exr may elect to pay which he pleases tho it exhausts all the assets and leaves nothing for the other creditors. unless priority is gained by suit if so that must be attended to

Comme. where assets fail to pay all the debts of the testator after his death. in this state no priority can be gained nor exists at the election of the Exrs. but all the creditors of every description must have their shares by pro rata

26 The Exr. having paid away the whole estate and having observed the priority of debts mentioned may if sued plead plene ad ministravit

Connec. Plene administravit is no plea in this state if there is any surplus, after paying state debts and sickness debts. for if the estate is solvent he has enaught to pay all, if insolvent every Creditor is entitled to his averagable share. and nothing exempt but the payment of that part. but after having paid public debts and those for sickness. plene administravit is a good plea

27 If the Exr & master the estate, and is so negligent that it is last. upon his pleading plene administravit. the Pltf may reply a devastavit. and if the fact is found judgment is rendered against the Exr. de bonis propriis

Connect. There is no such replication by a ~~creditor~~ creditor as devastavit. if the estate is solvent the creditor does not stand in need of it. if insolvent the creditor is entitled to sue for his average only. and in making the average. the devastavit if any, was considered as

No. (Observations. Exrs.)

any assets appear afterwards, the creditor must resort to the hands given by the Exr. for the due performance of his trust, and if any thing is recovered, when the land must still be the subject of a rec. and average among all the creditors.

28. The Exr. de son tort does not exist when there is a rightful Exr. and all acting unless he acts, claiming to be that Exr. but whoever meddles with that estate is an Exr. de son tort. and is liable to the creditors to the extent of the assets by him received no further, if he plead false as that he has not assets, when he has, he is liable to the extent of the whole claim, but his having paid out the assets goes only in mitigation of damages when sued by the rightful Exr. such Exr. cannot retain for his own debts, and when sued he is sued as Exr. of the last will of the testator. this in part here may have

WHERE. Exr's character if admitted would defeat the average Exr. for if any money is to be had, all the estate is insolvent it must be upon the principles of the com

Law. for no limitation is made in our Law by the statute restricting it. and of course if the Exr has assets sufficient the whole debt will be recovered. when it ought to pass through the rightful Exr's hands that an average might be made of it. Where an admr can have nothing to do with the estate, as in case of a fraudulent conveyance, no injury is done by supposing such a Character may exist ~~in a civilized country~~ in such

29th The Bond given by the Admr for the purpose of subjecting the kindsman in an action, if the administrator does not pay the debts, for this the person injured has his action against the Admr - but if the Admr so conducts by not inventorying the estate, as enables him to defeat the creditors by pleading plene administravit or making out false accounts, and praying the allowance of them to himself if he does not distribute the assets among the next of kin. then is the kindsman liable

Ernest. By our Law the Exor is also obliged to give bonds, and if he does not distribute the distributory shares he is liable on the bond in the same manner as the Admrs D.B.N. of the bond. Where there is an Exor he has been supposed to be liable if he did not pay over a legacy. But is there not a difference? If he assents to the legacy, he enables the Legatee to recover, and if he does any thing the bondsman be liable more than where he does not pay a debt. If he does not assent, there is no question but what the bondsman is liable. As the Ordinary can never refuse a devastavit, but is to consider his average, in making out which the devastavit is considered, it will be impossible for the Exor to avail himself of this principle, but must suffer for the devastavit of his companion.

30 L Co Exor is not liable for the devastavit of his companion, unless he committed the care of the goods to him, or signed same writing, acknowledging the

Comparisons Exers

receipt of the Iud perty, and in this case
altho he did not waste it, yet the other actu
ally had it. Yet it is conclusive evidence
against him. that the Iud perty came in
to his hands.

See the Can. Law above

3/ If an Exer sues for a legacy, shall plead
plene administravit. the Obl may reply a
devastavit

33 A Legatee sues for his legacy, either
in the Spiritual courts or chancery, unles
the legacy is charged upon the land, in
that case he must sue in Chancery. An
Exer however is liable in a court of Can
Law. where he has promised to pay the
legacy, upon such promise. And if he
has such legacy in his hands, such
promise is not within the Statute of
Frauds and Perjuries

Cannae. We have no spiritual courts
within View Therefore we have a court of
Ordinate. But a legatee sue in a com Law court

In the payment of legacies, the Ex. is to pay the specific legacies in the first place, and if the assets fail so that the specific legacies cannot be paid, such failure is to be a total loss on legacies, & all to abate pro rata. ~~that~~ according to their values, whilst they can be, and then they all abate. Possibly they are to be cancelled in this way, if used by the Ex. to pay debts; in such case there can not be any ~~debt~~ debt if taken by the creditor, as they may be, it may be considered as a mis-

S.

faisance to the legatee, in the same manner as if the legacy had been paid to a stranger.

2d In failure of assets to pay all the ~~debts~~ Legacies, specific legacies are to be paid first.

3d In failure of assets to pay all pecuniary legacies, they must abate in proportion among themselves.

Where the whole estate is given out in specific legacies, and then a pecuniary legacy given out of the estate, this is to be considered as a general legacy.

38 A specific legacy if last ordered is last to the legatee

If in case the legacies are paid before a debt the creditors must assert to the Exrs and the legatee to refund — if he has taken security of him. If he has taken no security of him he loses his debt. but if by fraud & such payment be considered as a payment by mistake. and be recoverable back

Comm. Under our statute. the Exrs is not in danger of being imprisoned with debts for unless the debts are not in by a certain time allowed by the court of Probate, they are not recoverable. If he has not exhibited his debt within the time limited. altho he cannot sue the Exrs cannot he come against the Legatee who has received his legacy?

40 In the case of the creditors not being paid. and Legatees having received their legacies and the Exrs being unable to pay the creditors he may come upon the Legatees

41 As a simple contract creditor in Chancery shall come against the heir. as testator in

Comparison Essex

in the place of specialty creditors. when they have exhausted the personalty, to the extent of such specialty debts, it shall & legatee have the like advantage against the heir. but not against the devisee

Comment. Our system precludes any such Law

#2 Where a legatee dies in the lifetime of the testator, such legacy is lapsed and sinks into the residuum. but if given over in event of such legatee dying, it is taken by the second legatee.

#3 Where a legacy is given to a legatee at such an age and the legatee dies before such age it is lapsed unless given over

#4 Where a legacy is given payable at such an age it is vested & transmissible to the legatees representatives, unless given over, on the death of the legatee.

#5 Where a legacy is given to one legatee and in case of his death it is given over. it is construed to mean payable to the second legatee in case the first dies before marriage or 21

#6 Where a legacy is given charged upon real property. & the real payable at such an age

and the legatee dies before such time the legacy is lapsed.

47. A legacy given by a parent to a child payable at such a time. and no provision made for the maintenance of the child such legacy is an interest. If given by any other person is not an interest

48. A legacy is given to a legatee payable presently, but legacy after is not has elapsed is an interest. The legatee is a minor or adult it is upon interest after the demand of the legacy

49 If a legacy is given payable at a future day or presently either by parent or another to an adult or minor but payable out of a fund which yields an annual profit it is an interest without demand

50 To determine whether a testator has in his lifetime ademed a legacy we must find that the testator had animum ademendi for then the alien the legacy is not a necessity to pledge it

Compar^ns Exr^s

to raise a sum of money this is no evidence of such intention and the Legatee shall be allowed it against the Exec^r if there are assets. If no such necessity can be supposed to exist it is to be attributed to nothing but an intention of the testator to advance it so if the legacy was a bond and this was voluntarily paid by the obligor no such intent is apparent or if paid by compulsion if it was to secure the debt or a necessity for cash induced it no such intention is apparent.

51 A legacy of all my personal estate includes all such property whether acquired before or after making the will

52 So a legacy of all the testators money goods & at such a place all papers that were there at the time of his death

53 A devise of all the testators land includes lands purchased after making the will unless republished or republished

54 Even a republication of the will will not pass after purchased lands that do not fall within the description of the words of a will. The will is supposed to speak from the time of republication.

55 A will is made giving a legacy to the children of J.S. at the time of making the will J.S. had ~~no~~ children, and after making the will other children of the children are born to J.S. the after born children shall not take unless there was a republication, after their birth.

56 If J.S. had no children at the time of making the will. The after born children shall take

57 A legacy is given to the children of J.S. & J.N. neither of them at the time of making the will had any children. after making the will they both have. but their numbers are unequal. the children of both take per capita

58 A legacy is given to the children of J.S. who had no children at the time of making the will or afterwards. But had grandchildren: they shall take but not if J.S had a single child

59 A legacy is given to be vested or payable if the legatee marry. such restraint

Of Executors

and the Legacy

60 A testator may clog a legacy with a condition that the legatee shall not marry a certain person, a person certain or a certain age, in that case the age claimed must be reasonable the indulgence has been carried so far as to allow of the restraint when it was not to marry a roman Catholic, but given dispensation of any denomination is generally valid

61 A legacy left by a husband to his widow conditioned not to marry, such condition.

62 A Legacy given upon condition that the legatee marry with the consent of a certain person such condition is only in terrorem, only in the event of such legatee marrying without consent. The legacy is given upon, in such case the first legatee takes the legacy

63 Where there is a marriage portion secured by articles or covenant and the covenantor leaves a legacy to the person entitled, if it be equal or greater than the portion, it is a performance of the covenant if it is less it is a performance pro tanto

64 Where the testator owes a debt and leaves a legacy equal or greater than the debt to the debtee

The old rule was that the legacy when received was a satisfaction of such debt. which rule was gradually impaired. by requiring that the legacy and debt should be eiudem generis and then that it should be payable at the same time and afterwards it was required. that there should be no general clause in the will directing all debts to be paid to make the legacy a satisfaction. and that a legacy to a natural child was never within the rule. it was then supposed that there ought to be some expression in the will indicative of the testators intention that the legacy was should be in satisfaction of the debt. And at length it was determined that it must be expressed in the will that it was in satisfaction of the debt to make it so. which resolution reestablished the dominion of common sense after she had been debased for more than a century

6th When a legacy was is given in a will & repeated in totidem verbis. it is but a single legacy. but if given in different instruments as in the body of the will and then in the codicil or any other writing. such legacies are accumulative

66. The legatees right to the legacy in all depends upon the Exrs consent. that he could have it. so that in case the legacy is specific there is no doubt but the Exr may use that legacy in payment of debts if there are assets without it and in such case it is out of the power of the legatee to sustain any action against the Exr. that presupposes the property in the legatee yet he may recover of the Exr the value of such legacy upon the ground that there are assets

67. A life estate may be vested in personal property and the absolute owner may give over to another person by will

68. Such property cannot be entailed & if given by words that would create an entail men in real property it acts absolutely in the donee

69 Annee. As an endowment of real property with as creates a life estate in point of duration why may not personal property in this country?

69 No remainder in a chattel real can by will be created after a life estate is made of a greater duration of time than is a person in esse or 21 years after the death of a person in esse

Connect. In this state not only an estate in a chattel real but in all other estates in Land may be given to commence at a future time. Provided the dance be a person in esse as the immediate descendant of a person in esse This is effected by statute it may not only be by will. but by deed

70 It is not necessary that a will of personal property be subscribed by any witness.

71 A will is signed if the name of the testator is found in the will whether at the top middle or bottom, provided it is in his handwriting

72 Nuncupavit wills may be made of personal property subject to a variety of restraints. By a statute of Charles 2nd no nuncupative will can be made of real property

Connect. The statute of Car does not obtain here yet I apprehend a nuncupative will would not be admitted. unless the situation of the testator was such as prevented his making a written will

73d A donatio causa mortis is a gift of personal chattel upon condition of being valid upon his death. and to make it good there must be an actual tradition of the thing given, & it seems questionable whether a chose in action not negotiable can be thus given

74 On the death of a person intestate by the old common Law. the children were to have a rationabilis pars, the wife a rationabilis pars and a rationabilis pars was devoted to pious uses — In Reality a rationabilis pars meant a one third. But as the bishops had the management of such estates by a delegated power from the crown, and being pious men they devoted the whole estate to pious uses among which the payment of debts was not reckoned so that creditors lost their debts & widows and orphans were beggared — these evils were remedied by a succession of statutes which have taken from the bishops this power over dead mens estates. so that now the payment of debts. the surplus of personal estate when there are children, is given, one third to the widow and the rest among the children and their representatives if there is no widow the children take all.
Can We have a similar statute

Commissioners Exs

75 If the intestate has no children &c then is the personal estate distributed one moiety to the wife, and the other moiety to the next of kin and their legal representatives. If there is no wife the next of kin and their legal representatives take the whole. The mother is placed upon a footing with the brothers and sisters, no preference is given to the whole over the half blood

even contra. If the intestate has no children &c then is the personal estate distributed one half to the wife and the other half to the brothers and sisters of the whole blood and their legal representatives, and for want of such to the father and mother who are next of kin, and for want of such to the brothers and sisters of the half blood and their legal representatives, and for want of these to the next of kin where there is no wife such claim ants take the whole of the estate

76 The computation of kindred is by the civil Law

77 No representation is admitted by uncles and brothers and sisters children in the collateral line but in the descending is admitted ad infinitum

78 When claimants take by representation on the distribution it is per stirpes, when as next of kin, per capita

Declaration in an action of assumpsit

you must state a consideration, and
state particularly the agreement from which
it arises. If the performance of this act
was necessary to become a debt, you must
state it, to entitle him to an action. As performance
demand, notice. But in some
cases neither of these are necessary to be
stated, in which case it is sufficient
to state generally the agreement.
His evidence substantially must make out
the same agreement he has
declared upon. Perhaps the words need not
all be the same; but it must be so evidently
the same, that it shall appear to
the court and jury that it was upon
the declaration contains a promise to pay on
request, and the note is payable on
demand, it may be material to
state a request, and
in declaring upon
an assumpsit you must state
the indebtedness, and then it proceeds generally

and Raise the assumpsit. Plaintiff owe
d Defendant money & account stated and
in consequence Deft promised to pay
Plaintiff on request. & Defendant paid Plff
& promised to pay quantum valebat
The action for money had and receiv
applies to a thousand cases of different complexion
familiar in England the same for many
cases in every case. But the Plff must prove
fully give notice to the Deft an old ground
the action is to recover back an undue
money had & Received means to make
it like us the declaration is bad, but the
is permitted to point to the proof of other in
debtedness than that for money actually rec
& if the Plff would have that ind the must
state it in his declaration. Browning & Mann
Lyer. In this action the general issue
non assumpsit. under this almost any
defence is given in Evidence. Except the Eng
the statute of limitations which must be pled
in an assumpsit infra sex annos. within six years
than six years an elapse & but the Deft
must admit by his plea that he promised

more than six years ago. for perhaps resorting the promise would take it out of the Act.
a remedy to a debt (this is doubtful)
with us any act of the Mr by which the Deft
is discharged must be pleaded specially. as a release &c
plea
and cannot be given in evidence
under Gill Payment.
& limitations
If a joint Obligor after the statute hath run
upon the Obligation. does any act which a-
mounts to a waiver of the Statute. It is a question
whether his co. Obligor is bound thereby vide
contradictory authorities in Vent. & Daniels
Foreign Attachment is this. by Custom
of London the country being indebted to B
C. is indebted to A. B. may sue out
an attaching a copy with C. describing him
to be agent Factor &c create a lien upon the
money due from C. to A. If after this C
voluntarily pays it over to A. he will be
obliged to pay it also to B. yet if A. the above
day (which before judgment in B's suit and
a scire facias thereon. sue (the Garnishee,
commonly) plead the foreign attachment in bar
of the action. for in this way the law con-

the recovery of a just demand, false made to avoid creditors, or discharge the debtor entirely. It puts also the absconding debtor and the Garnishee on the same debt, if must be levied and the Garnishee may pay it over to the Sheriff and the money paid into the officers hands with the return of the writ and the Garnishee for this purpose must appear on the return of the writ and it must be set for the Garnishee (Att. Gen'l opinion) this a rule that the Garnishee is to be subjected to no inconvenience in consequence of being served with the foreign attachment

Ex. B. in the case put get an Execution upon a writ of Fieri facias against C. it must be endorsed by the Sheriff that in 60 days, he leaves no property in the money in his hands. the same as the debtor who does not take the property levied upon within 60 days.

By C pays B. an Execution issues against C. the Garnishee may enter and defend the action, but he cannot plead the suit by plene administravit, but he can plead any thing that he is not factor agent &c. for he can any thing that upon the fieri facias, and the judgment thus obtained against the absconder can only be made use of to the extent of the writ of fieri facias upon against the Garnishee and no greater. the debt against the absconder. But the principal cannot plead the same recovered against the Garnishee in an action of Trover

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